IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 442 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJUBHAI MANGABHAI - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MB PARIKH for Applicant(s) : 1,
Mr.U.R.Bhatt, A.P.P. for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 10/04/2007

ORAL JUDGMENT

1. Heard learned Advocate Mr. M.B.Parikh for the petitioner and learned A.P.P. Mr.U.R.Bhatt for the respondent-State.

2. The present Special Criminal Application is directed against the judgment and order dated 22-2-2007 passed by the learned Sessions Judge, Amreli, in Criminal Revision Application no.12/2007 dismissing the same and thereby confirming the order dated 19th Febryary, 2007 passed by the learned Chief Judicial Magistrate, Amreli, in Criminal Misc.Application no.67 of 2007 rejecting the prayer for custody of the Muddammal cattle intercepted and seized by Amreli Taluka Police at present kept at Pavandham Gauseva Ashram(Panjrapole).

3. It is the case of the petitioner that the petitioner is the owner of six cattles and that the same were not meant for slaughter as eight out of the fifteen animals were Milch animals. According to the petitioner while the said animals were being transported to Bharuch through Tempo bearing no.GJ-4-T-7981, the Amreli Taluka Police intercepted and seized the cattle on an FIR having been filed by one Shri J.H.Dama which is registered vide II CR no.9 of 2007 on the allegation that the cattle were being taken for slaughtering, and therefore, the petitioners have committed offences under Sections 11(a)(d)(e)(f), 35 and 29 of the Prevention of Creultyt to Animals Act, 1960 and also under Sections 5,6, 7, 8, 9 and 12 of the Bombay Animals Preservation Act, 1954. Thereafter, the custody of the cattle were handed over to Pavandham Gauseva Ashra(Panjrapole).

4. The present petitioner had preferred Criminal Misc.

Application no.67 of 2007 before the learned Chief Judicial Magistrate, Amreli, for custody of the Muddamal cattle which came to be rejected on the ground that the cattle were being transported to Bharuch for slaughtering and kept in the tempo in an unhygenic and cruel manner without facilities of water and fodder. Being aggrieved by the said order of the Magistrate, the petitioners moved Criminal Revision Application no.12 of 2007 before the learned Sessions Judge, Amreli, which also met with the same fate. These two orders are the subject matter of challenge in the present Special Criminal Application.

5. Learned Advocate Mr. M.B.Parikh for the petitioner has submitted that the animals in question were merely being shifted from one place to another and that the same were neither meant for slaughtering nor were they being sent to any slaughter house. He further submitted that the Pavandham Gauseva Ashram(Panjrapole) had already made request to handover the cattles to the owner, expressed their inability to maintain the cattle properly and have also made a statement that the cattle are likely to suffer damage or perish. A letter dated 20-2-2007 of the said Ashram(Panjrapole) to that effect is also produced by the petitioner at Annexure “C” to the petition. It is also the contention of the learned Counsel that one buffalo had already died. Thus, it is the submission of the learned Counsel that considering the fact that the petitioner is the owner of the cattle in question, and when the

Panjrapole is unable to maintain the cattle properly, the possesion of the cattle be handover to the petitioner so that their proper care can best be taken by the petitioner during the course of trial. The learned Counsel also contended that even assuming that the offence is committed, this was the first offence. It is therefore prayed that the impugned orders be quashed and set aside.

6. Learned A.P.P. Mr. Bhatt on the other hand has submitted that the orders under challenge passed by the two Courts below are quite just and proper which does not call for interference by this Court.

7. Having considered the rival submissions, I am fully convinced with the arguments advanced by the learned Counsel for the petitioner. I am fortified in my view by a catena of decisions rendered by this Court as also the Apex Court. Firstly, this Court in the decision dated 30th October, 1985/1st November, 1985 rendered in Special Criminal Appluication no.1971 of 1985(Coram:M.B.Shah.J.) as his Lordship then was, in an identical set of facts interfered with the order of the lower Court and directed the Investigating Officer to deliver possession of the alive animals to the petitioner forthwith and the learned Magistrate was also directed to see that the possession of the animals was delivered to the petitioner immediately without fail on certain conditions. Secondly, reference can be had to the decision rendered

in the case of Vadhwan Mahajan Panjrapole v. State of Gujarat & Anr.(2001 (1) G.L.H.662) as also the decision of the Hon'ble Apex Court in Manager, Panjrapole, Deodar & Anr.(1999 (1) G.L.R. 587 (S.C.) wherein in a case where the offence has been committed for the first time, it was held that the custody of the Muddamal must be handed over to the petitioner if there was no material on record to show that the offence is being repeated. There is yet another decision in the case of Manager, Panjrapole, Deodar v. Chakaram Moraji Nat & Anr. (1997 (2) G.L.H.1321 wherein also it is observed that the interim custody of the seized animals must be handed over to the petitioner.

8 In view of what is discussed hereinabove, in light of the ratio laid down by the decisions of this Court as well as the Apex Court, the petitioner being the owner of the cattle and they are facing the first prosecution, I am of the opinion that interest of just will be met if till the pending case in connection with II CR. No.9 of 2007 is decided, the custody of the Muddamal animals be handed over to the petitioner since he has a better claim for the custody of the animals during prosecution and the present petition deserves to be allowed.

9. Accordingly, the application is allowed. The impugned order dated 22-2-2007 passed by the learned Sessions Judge, Amreli, in Criminal Revision Application no.12/2007 dismissing the same and

confirming the order dated 19th Febryary, 2007 passed by the learned Chief Judicial Magistrate, Amreli, in Criminal Misc. Application no.67 of 2007 rejecting the prayer for custody of the Muddammal cattle are hereby quashed and set aside. The interim custody of the remaining alive cattle shall be handed over to the petitioner upon their furnishing all the particulars regarding such cattle and also furnishing personal bond inter alia stating therein that the said cattle shall be produced before the learned Magistrate as and when required. The petitioner shall also file a personal undertaking to the effect that they shall maintain the cattle in a good and healthy condition. The petitioner is also directed to get the ears of the cattle puncutured for the purpose of identification. The trial Court is directed to give priority to the pending case in connection with II CR no.9 of 2007 so as to conclude the proceedings as expeditiously as possibl, preferably, within a period of three months from today. It would be open for the petitioner to take appropriate legal remdy against the concerned responsible persons for the loss of catte, at an appropriate point of time.

10. Rule is made absolute in the aforesaid terms. D.S.permitted.

(M.D.Shah,J.)

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